

100

**Special Temporary Authority
FCC File No. 712219
OFS Station WNTY605**

Liberty Cable Co., Inc. ("Liberty") respectfully requests special temporary authority pursuant to Section 94.43 of the Commission's Rules to operate an 18 Ghz operational-fixed microwave service ("OFS") station at 335 Madison Avenue, NY, NY. Given the extraordinary circumstances regarding the need for service, any delay in the institution of temporary operation would seriously prejudice the public interest.

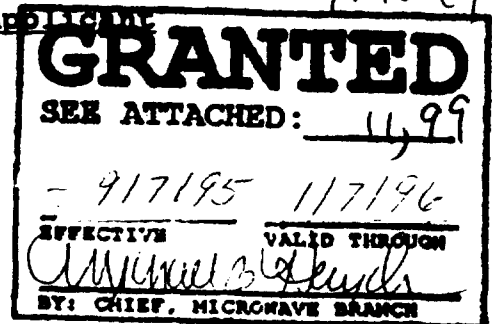
Pursuant to Section 94.43(c) of the Commission's Rules, the following is submitted:

1. Name, Address and Citizenship of Applicant

Liberty Cable Co., Inc.
215 E. 95th Street
New York, NY 10128
ATTN: Behrooz Nourain

New York Corporation

2. Need for Special Action



On February 21, 1995 (File No. 712219), Liberty filed the above-referenced application to modify its 18 GHz station at 335 Madison Avenue. Liberty's application in File No. 712219 proposes to add one new microwave path. This application was conditionally granted and a license was issued effective May 2, 1995. The application would now be ripe for grant but for a petition to deny filed by Time Warner Cable of New York and Paragon Cable of Manhattan (collectively, "Time Warner").

Liberty is a private cable or SMATV operator serving approximately 30,000 subscribers who live mainly in buildings in the New York metropolitan area. In the vast majority of cases, Liberty provides service pursuant to the Commission's action in Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. 1270 (1991) ("the 18 GHz Order") through microwave channels in the 18,142 - 18,580 band ("the 18 GHz band"). When the 18 GHz Order granted private cable operators access to the 18 GHz band, the Commission voiced its conviction that the public interest was well served by allowing competition in the video services marketplace through wireless cable operators. The Commission said:

After carefully reviewing the record, we conclude that adoption of this proposal, ..., will promote the public interest by encouraging competition in the video distribution marketplace. The need for such action is well documented. This Commission recently conducted a review of marketplace developments in the video

distribution industry in which we concluded that cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anti-competitive conduct. In these circumstances, competition provides the most effective safeguard against the specter of market power abuse. As competition from alternative multichannel providers such as second competitive cable operators, wireless cable multi-point distribution services, SMATV systems, and direct broadcast satellite ("DBS") emerges, we find that it would serve the public interest to enhance their competitive potential. 6 FCC Rcd. at 1271, para. 9.

The Commission also said:

In conclusion, cable systems increasingly dominate the multichannel video delivery services, resulting in criticism of the industry and complaints of anti-competitive conduct. Although rival multichannel providers are emerging in the marketplace, we recognize the need for action designed to encourage these operators to enter the market and to increase their market viability. To improve the competitive potential of alternative multichannel providers eligible to hold licenses in the Operation-Fixed Microwave Service, we take action in this proceeding permitting the use of the 6 MHz wide, point-to-point channels in the 18 GHz band for the distribution of video entertainment material. We also amend our rules to eliminate the restriction on the number of channels that may be assigned for this purpose. This action serves the public interest by encouraging the growth of competitive alternatives to cable systems and by providing consumers with a diverse range of video distribution service. In addition, the action taken herein furthers the best interests of the public by promoting spectrum efficiency and increasing the flexibility of licenses. 6 FCC Rcd. at 1272, para. 16.

Furthermore, in its 1994 report to Congress on the status of competition in this marketplace, the Commission makes clear that little has changed in the way of competition; cable is still king. In sum, the public interest is well served by the promotion of competition by wireless cable operators in the video services marketplace.

The Commission action in opening the 18 GHz band to wireless cable operators has achieved its goal in that it has stimulated competition to incumbent cable monopolists. Liberty is competing head-to-head with Time Warner in Manhattan using the 18 GHz band. To compete effectively with Time Warner, Liberty must convert buildings from Time Warner's service to Liberty's service after subscribers in those buildings have elected to switch from Time

Warner to Liberty. If Liberty cannot meet its potential customers' demand for its service, those potential customers will cancel their contracts with Liberty and remain with Time Warner. It is hard to blame them.

A series of occurrences where Liberty fails to deliver its service within 30 days and where potential customers cancel their subscriptions to Liberty's service will immeasurably damage Liberty's business and reputation. Of course, it will also greatly damage the Commission's ability to fulfill its goal of bringing competition to the video marketplace, at least in the short term in Manhattan.

Time is, therefore, of the essence. Any further delay in the consideration of the aforementioned applications is a disservice to the public interest because it seriously undermines Liberty's ability to deliver service, to compete and to be economically viable. Delay gravely threatens Liberty's ability to remain in business. Time Warner realizes this fact and has filed a petition to deny grant of the aforesaid applications. Time Warner's petition has seriously hampered a timely grant of the application.

Liberty fully supports Time Warner's right to voice its objections to Liberty's applications and to have the Commission decide its petition to deny. However, Liberty believes that the Commission must strike a balance between Time Warner's right to be heard on its objections with the public's right to receive service in a timely manner and the public's right to the lower prices which competition brings. Liberty believes that such a balance can be struck if the Commission conditionally grants the instant STA subject to the Commission's decision in the Time Warner petition to deny. Since Liberty's applications are in technical order, and since Time Warner has not challenged Liberty's applications on a technical basis, and since the conditional grant of the STA requested herein will not prejudice in any way Time Warner's right to be heard on its objections to the Liberty applications or the Commission's ability to decide the petition to deny, Liberty submits that the institution of an STA as requested herein is very much in the public interest and should be granted immediately.

3. Type of Operation

Fixed transmission of video and audio signals in the 18 GHz band.

4. Purpose of Operation

The equipment will be used to distribute applicant's own products or services, including video entertainment programming, to private cable buildings on frequencies in the 18,142-18,580 MHz band.

5. Time and Date of Operation Desired

Liberty requests authority for twenty-four (24) hour operation pending action on the application for license and requests that such authority begin on the tenth day following the filing of this request for special temporary authority.

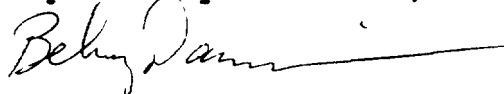
6-12. Technical Information

Liberty will operate the station in conformance with the technical specifications outlined in the referenced application(s).

Liberty certifies that no party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. Section 862.

Please address all correspondence regarding this matter to Liberty's counsel, Michael J. Lehmkuhl, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, D.C. 20006 as well as the undersigned.

Respectfully submitted,



Behrooz Nourain
Director of Engineering

Date: May 3, 1995

FEDERAL COMMUNICATIONS COMMISSION
FCC REMITTANCE ADVICE

Approved by OMB
3060-0589
Expires 2/28/97

PAGE NO. 1 OF

(RESERVED)

SPECIAL USE

FCC/MELLON MAY 04 1995 *WJH*

FCC USE ONLY

(Read instructions carefully BEFORE proceeding.)

PAYOR INFORMATION

(1) FCC ACCOUNT NUMBER	Did you have a number prior to this? Enter it	(2) TOTAL AMOUNT PAID (dollars and cents)
0 1 3 3 6 9 6 8 0 2		\$ 45 • 00

(3) PAYOR NAME (If paying by credit card, enter name exactly as it appears on your card)

Liberty Cable Co., Inc.

cc: Michael J. Lehmkuhl, Esquire
Pepper & Corazzini, L.L.P.

(4) STREET ADDRESS LINE NO. 1

215 East 95th Street, Suite 1A

1776 K Street, N.W., Suite 200

Washington, DC 20006

(5) STREET ADDRESS LINE NO. 2

(202) 296-0600

(6) CITY

New York

(7) STATE

NY

(8) ZIP CODE

10028

(9) DAYTIME TELEPHONE NUMBER (Include area code)

(212) 891-7770

(10) COUNTRY CODE (if not U.S.A.)

ITEM #1 INFORMATION

(11) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR	FCC USE ONLY
--	--------------

(12A) FCC CALL SIGN/OTHER ID	(13A) ZIP CODE	(14A) PAYMENT TYPE CODE	(15A) QUANTITY	(16A) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
WNTY605		P A O M	1	\$ 45.00

(17A) FCC CODE 1

(18A) FCC CODE 2

(19A) ADDRESS LINE NO. 1

(20A) ADDRESS LINE NO. 2

(21A) CITY/STATE OR COUNTRY CODE

ITEM #2 INFORMATION

(11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR	FCC USE ONLY
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(12B) FCC CALL SIGN/OTHER ID	(13B) ZIP CODE	(14B) PAYMENT TYPE CODE	(15B) QUANTITY	(16B) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
				\$

(17B) FCC CODE 1

(18B) FCC CODE 2

(19B) ADDRESS LINE NO. 1

(20B) ADDRESS LINE NO. 2

(21B) CITY/STATE OR COUNTRY CODE

051

CREDIT CARD PAYMENT INFORMATION

(22) MASTERCARD/VISA ACCOUNT NUMBER:

☐ Mastercard

EXPIRATION DATE:

☐ Visa

AUTHORIZED SIGNATURE

DATE

BERRY BEST COURIERS, LTD.

1990 M St., N.W., Washington, D.C. 20036, Suite 740 -- 202-293-1964

026984

FROM:

Account Number	File	Date	5/4/95
Sender's name	(Please Print or Type)	Phone	(202) 296-0600
Company			
Street Address			
City	State	ZIP	

TO:

PO BOX (Required)	358305
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Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor Room 153-2713
Pittsburgh, Pennsylvania

You warrant that this shipment is packed adequately to insure safe transportation with ordinary care in handling. You warrant that your package is properly marked and addressed for delivery.

Our liability for delays not caused by your negligence is limited to a refund of your delivery charges. We will not be liable for loss damage or delay caused by events that we cannot reasonably foresee including, but not limited to acts of God, perils of transportation, weather conditions, mechanical delays, acts of war, strikes, civil commotion, or acts or omissions of public authorities with actual or apparent authority.

WE WILL NOT BE LIABLE IN ANY CASE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, WHETHER OR NOT WE KNEW SUCH DAMAGES MIGHT BE INCURRED.

Your Reference Information	1808
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Check appropriate box for return of date-stamped copy. For overnight, include carrier and account number.	
<input type="radio"/> Hold for Pickup	<input checked="" type="radio"/> Hand-Deliver
<input type="radio"/> Overnight	<input type="radio"/> Mail
Overnight Carrier	Your Account Number

For Office Use Only	CTN#
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Received at Berry Best By:	Date	Time
Blair	5-4-95	3:00

05-08-95 0358305 8305460 2 015 10



**Mellon
Bank**

PEPPER & CORAZZINI
ATTORNEYS AT LAW
1778 K STREET, N.W., SUITE 200
WASHINGTON, D.C. 20006

20743

AMERICAN SECURITY BANK, N.A.
WASHINGTON, D.C.

15-58
540

PAY THE SUM 45 DOLS. 00 IS DOLLARS

TO THE
ORDER OF

Federal Communications Commission

DATE	CHECK NO.	AMOUNT
5/3/95	20743	45.00

PEPPER & CORAZZINI
ATTORNEYS AT LAW

Barbara Stupf

#020743# 10540005510 24-860 49 822# 70000004500#

**FEDERAL COMMUNICATIONS COMMISSION
1270 Fairfield Road
Gettysburg, PA 17325-7245**

ATTACHMENT - Explanation of Numbers Shown on Stamp

Please note the following with respect to your recent request.

6. Associate this authorization with all appropriate station records. A new license will not be issued.

7. This authority is conditioned on our receipt, within 10 days, of a copy of the STA request bearing the original signature of the applicant.

8. This authority is conditioned on our receipt, within 10 days, of proper payment in the amount of \$_____. This required fee and FCC Form 159 must be sent to the address identified in the fee guide for the appropriate radio service.

10. Subject to ET Docket 92-9 which includes operation on a secondary, non-interference basis.

11. The antenna(s) may be no more than twenty (20) feet above the ground or manmade structure other than a tower or pole, or must be mounted on a structure that complies with an existing and approved Federal Aviation Administration Final Determination.

12. This facility may not cause interference to any authorized Mexican communication system and authority to operate is granted on a secondary, non-interference basis only. As a condition of grant, you are required to notify the Engineer in Charge or the appropriate Commission Field office when this station is initially placed in service, and at subsequent times when any operating parameter affecting its interference potential is changed.

13. Operation under this Special Temporary Authority may not cause interference to any authorized Canadian communication system and authority to operate is on a secondary, non-interference basis only.

99. OTHER: This authority is subject to final resolution of Time Warner's petitions to deny the underlying applications and any other appropriate action the Commission may take against Liberty in the future. This STA may be terminated by the Commission at will and without a hearing. All STAs are conditioned on Liberty's future compliance with all applicable Commission rules.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Gettysburg, PA

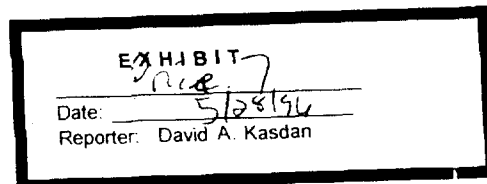
In Re Applications of)	
)	
LIBERTY CABLE CO., INC.)	File Nos.
)	
For Private Operational Fixed)	712218
Microwave Service Authorizations)	712219
)	
New York, New York)	

To: Chief, Wireless Telecommunications Bureau

SURREPLY

Liberty Cable Co., Inc., by counsel and pursuant to Section 1.45(c) of the Commission's Rules, respectfully submits its Surreply to the May 5, 1995 Reply to Opposition ("Reply") submitted in this matter by Time Warner Cable of New York City and Paragon Cable Manhattan (collectively "Time Warner"). The following is submitted in support thereof:

Time Warner alleges in its Reply that Liberty has installed OFS receive sites (639 West End Avenue and 1775 York Avenue (the Brittany)) and commenced to provide service to those locations. Liberty, in fact, did construct those sites and has been providing service as alleged. Exhibit 1, Affidavit of Peter O. Price.



Federal Communications Commission	
Docket	96-41
Presented	Twcv
Disputed	18
Identified	✓
Received	✓
Rejected	0035
Reporter	PK
Date	1-10-97

Applications for authorization to establish paths of communication with these locations are presently pending under file nos. 708778 and 708779 respectively.^{1/} Exhibit 1.

Liberty's commencement of service to these properties was, in large part, the inadvertent result of a breakdown in communications between its administrative offices and its engineering offices after the Commission requested technical changes in a host of pending applications. Exhibit 1. In addition to the above-referenced sites, service is presently being provided to: 35 West End Avenue (708778); 567 Fifth Avenue (708779); Resident Hall, NYU Campus (708780); Greenburg Hall, NYU Campus (708780); 524 East 72nd Street (708781); 30 Waterside (711937); 16 West 16th Street (712218); 433 E. 56th Street (711937); 114 E. 72nd Street (709426); 25 West 54th Street (709332); 200 East 32nd Street (708780); 6 E. 44th Street (712219); and 2727 Palisades Avenue.

Liberty has been in the private cable business via the use of 18 GHz microwave since 1991 and was a leader in the movement to open the 18 GHz band for use in the distribution of video entertainment material to customers. Exhibit 1. Liberty was awarded the first such license in 1991. Since that time, Liberty has obtained over 100 authorizations to distribute its video entertainment material to customers via microwave. Until now, Liberty has never once been alleged to be operating in violation of the Commission's rules, much less been found to be operating in such a fashion.^{2/}

^{1/} 1775 York Avenue is misidentified in application file no. 708779 as 441 East 92nd Street.

^{2/} By contrast, Time Warner has been held to be in violation of the Commission's program access and rate regulations.

Based upon its experiences with the Commission's Part 94 licensing process, Liberty has assumed a certain lead and lag time in its contracting. Typically, Liberty attempts to build a sufficient period of time into its contracts in an effort to allow for the necessary application to be processed to a grant prior to the time in which service under the contract is to commence. In situations where contract requirements conflict with prevailing application processing times, Liberty has traditionally sought special temporary authority from the Commission to operate pending final action on the application. Exhibit 2, Affidavit of Behrooz Nourain, Director of Engineering. It has been Liberty's pattern and practice to await a grant of either a pending application or request for STA prior to making a microwave path operational. Exhibit 2.

Application processing for each of the above-referenced sites has exceeded the norm due to the frequency coordinator's use of incorrect emission designators. Exhibit 2. Mr. Nourain, perhaps inadvisably, assumed grant of the STA requests, which in his experience had always been granted within a matter of days of filing, and thus rendered the paths operational. Exhibit 2. To compound the situation, the administration department failed to notify Mr. Nourain that grant of Liberty's applications was being held up indefinitely as a result of the Time Warner petitions. Exhibits 1 & 2. Mr. Nourain was unaware of the petitions against Liberty's applications until late April of 1995. Exhibit 2. Thus, without knowledge that his actions were in violation of the Commission's rules, and without intent to violate those rules, Mr. Nourain commenced operation prior to grant.

Liberty has requested special temporary authority to operate each of the paths petitioned by Time Warner to allow it to operate while it opposes what it believes are

baseless allegations concerning its qualifications to hold 18 GHz authorizations for the delivery of video entertainment material to customers. This inadvertent violation compounds the need for a grant of those requests pending action on the Time Warner petitions. No viable alternative other than grant of special temporary authority as Liberty has requested better serves the public interest.

While termination of service over the microwave paths is an alternative, that alternative is not in the public interest. First, any termination would force Liberty to abruptly cut off service to existing subscribers. Even if Time Warner were to expeditiously jump into the breach -- as it no doubt would like to do -- these subscribers would be deprived of service for an indeterminate period of time.

Equally as important is the fact that the forced termination of Liberty service would irreparably harm Liberty's reputation with its subscribers and cripple Liberty's efforts to provide viable competition to Time Warner in the New York metropolitan area. With the elimination of Liberty as a distributor of multichannel video programming in New York City, subscribers would be forced back into the arms of Time Warner, the grasp of which they sought to escape. Exhibit 3, Letter from Daniel F. Tritter to Ed Olsen, Time Warner Accounts Manager - Condominiums and Co-ops, dated May 15, 1995; Exhibit 4, letter from Linda DiGiovanni, Board Secretary, Park Hudson, to Bertina Ceccarelli, dated May 17, 1995; Exhibit 5, letter from Bob Steinberg, Board President, Briar Oaks, to Bertina Ceccarelli, dated May 17, 1995; and Exhibit 6, Dear Normandy shareholder letter. The state of competition in the New York metropolitan area multichannel video delivery market would revert to the state of monopoly that existed before

Liberty began to offer its alternative programming services. Again, such a state of affairs is not in the public interest.

When the 18 GHz Order granted private cable operators access to the 18 GHz band, the Commission voiced its conviction that the public interest was well served by allowing competition in the video services marketplace through wireless cable operators.

The Commission said:

After carefully reviewing the record, we conclude that adoption of this proposal, ..., will promote the public interest by encouraging competition in the video distribution marketplace. The need for such action is well documented. This Commission recently conducted a review of marketplace developments in the video distribution industry in which we concluded that cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anti-competitive conduct. In these circumstances, competition provides the most effective safeguard against the specter of market power abuse. As competition from alternative multichannel providers such as second competitive cable operators, wireless cable multi-point distribution services, SMATV systems, and direct broadcast satellite ("DBS") emerges, we find that it would serve the public interest to enhance their competitive potential.

Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. at 1271.

The Commission also said:

In conclusion, cable systems increasingly dominate the multichannel video delivery services, resulting in criticism of the industry and complaints of anti-competitive conduct. Although rival multichannel providers are emerging in the marketplace, we recognize the need for action designed to encourage these operators to enter the market and to increase their market viability. To improve the competitive potential of alternative multichannel providers eligible to hold licenses in the Operation-Fixed Microwave Service, we take action in this proceeding permitting the use of the 6 MHz wide, point-to-point channels in the 18 GHz band for the distribution of video entertainment material. We also amend our rules to eliminate the restriction on the number of channels that may be assigned for this purpose. This action serves the public interest by encouraging the growth of competitive alternatives to cable systems and by providing consumers with a diverse range of video distribution service. In addition, the action taken

herein furthers the best interests of the public by promoting spectrum efficiency and increasing the flexibility of licenses.

Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. at 1272.

Furthermore, in its 1994 report to Congress on the status of competition in this marketplace, the Commission makes clear that little has changed in the way of competition; cable is still king. Annual Assessment of the Status of competition in the Market for the Delivery of Video Programming, 9 FCC Rcd 7442 (1994). In sum, the public interest is well served by the promotion of competition by wireless cable operators in the video services marketplace.

The Commission's action in opening the 18 GHz band to wireless cable operators has achieved its goal in that it has stimulated competition to incumbent cable monopolists. Liberty is competing head-to-head with Time Warner in Manhattan using the 18 GHz band. To compete effectively with Time Warner, Liberty must convert buildings from Time Warner's service to Liberty's service after subscribers in those buildings have elected to switch from Time Warner to Liberty. If Liberty cannot meet its potential and existing customers' demand for its service, those customers will cancel their contracts with Liberty and remain with Time Warner. As Mr. Tritter's letter indicates, subscribers to other services, as well as many non customers who have never subscribed to cable will also be denied a competitive choice.

A series of occurrences where Liberty fails to deliver its service within 30 days and where potential customers cancel their subscriptions to Liberty's service will immeasurably damage Liberty's business and reputation. Of course, it will also greatly damage the Commission's ability to fulfill its goal of bringing competition to the video marketplace, at

least in the short term in Manhattan where Liberty has expended millions of dollars to install its system and repel Time Warner's almost constant assaults.

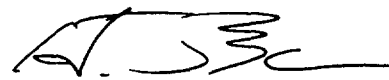
CONCLUSION

Liberty respectfully acknowledges its unauthorized operation. In the future, Liberty will install administrative procedures to ensure that service is not commenced prior to Commission grant of authority to commence service. Liberty reiterates here its request for special temporary authority to operate pending action on the petitions to deny.

Respectfully submitted,

LIBERTY CABLE CO., INC.

By



Howard J. Barr
Its Attorney

PEPPER & CORAZZINI, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

May 17, 1995

SENT BY:

5-17-95 : 11:36 : Pepper & Corazzini

EXHIBIT 1

DECLARATION OF PETER O. PRICE

I, Peter O. Price, do hereby declare and state under penalty of perjury as follows:

1. I am President of Liberty Cable Co., Inc..
2. I have read the foregoing Surreply. With respect to statements made in the Opposition, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information, or belief.




Peter O. Price

Date: 5/17/95

DECLARATION OF BEHROOZ NOURAIN

I, Behrooz Nourain, do hereby declare and state under penalty of perjury as follows:

1. I am Director of Engineering of Liberty Cable Co., Inc.
2. I have read the foregoing Surreply. With respect to statements made in the Opposition, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information, or belief.



Behrooz Nourain

Date: 5/17/95

Before the
FEDERAL COMMUNICATIONS COMMISSION
Gettysburg, PA 17325

In Re)
)
LIBERTY CABLE CO., INC.)
)
For Special Temporary Authority)
to Operate Stations in the)
Private Operational Fixed)
Microwave Service)
)
New York, New York)

To: Chief, Microwave Branch

File Nos.
708778
708779
708780
708781
709332
712203
712218
712219

Federal Communications Commission	
709426, 711937	
Decked	96-41 19
Presented	TWCV
Identified	<input checked="" type="checkbox"/>
Received	<input checked="" type="checkbox"/>
Rejected	<input type="checkbox"/>
Reporter	SR
1-10-97	

REPLY TO OPPOSITION TO
REQUESTS FOR SPECIAL TEMPORARY AUTHORITY

Liberty Cable Co., Inc., by counsel and pursuant to Section 1.45 of the Commission's Rules, hereby submits its Reply to Time Warner Cable of New York City's and Paragon Cable Manhattan's (collectively "Time Warner") May 11, 1995 Opposition to Requests for Special Temporary Authority ("Opposition"). The following is shown in support thereof:

Time Warner's Opposition is based in large part on the erroneous assumption that grant of Liberty's STA requests (the "Requests") will prejudice the Commission's ability to take action on the Petitions to Deny. Nothing could be further from the truth. Liberty's requests specifically recognized that favorable action thereon would be subject to the Commission's ultimate action on the applications and the Petitions. Indeed, STA

allowing operation prior to final action on a pending application is always conditioned on and subject to Commission action on the underlying application. Liberty recognizes and accepts this fact.

Contrary to Time Warner's assertion, a request for special temporary authority is not the proper venue for resolution of allegations promulgated in a petition to deny. Such assertions stand as further evidence of the obstructionist, as opposed to public interest, purposes underlying Time Warner's filings.

Liberty has not confused its own interest with the public interest. Liberty is the competition in the New York multichannel video delivery marketplace. The Commission has unequivocally held that competition in the multichannel video delivery marketplace is in the public interest. See e.g., Operational Fixed Microwave Service (Video Distribution Systems -- 18 GHz), 6 FCC Rcd 1270 (1991) (subsequent history omitted). The Commission stated therein

that the adoption of this proposal, particularly in conjunction with our concomitant proposal to eliminate the four channel per transmitter site limitation, will promote the public interest by encouraging competition in the video distribution marketplace. The need for such action is well documented. The Commission recently conducted a review of marketplace developments in the video distribution industry in which we concluded that cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anticompetitive conduct. In these circumstances, competition provides the most effective safeguard against the specter of market power abuse. As competition from alternative multichannel providers, such as second competitive cable operators, wireless cable/multi-point distribution services, SMATV systems, and direct broadcast satellites (DBS) emerges, we find that it would serve the public interest to encourage these rival operators to enter the market and to enhance their competitive potential.

Video Distribution Systems -- 18 GHz), 6 FCC Rcd at 1272 (footnotes omitted). Denial of the STA requests will defeat rather than encourage competition. Accordingly, the public interest warrants favorable action on the STA requests.

Additionally, a number of Liberty's contractual obligations are imperiled as a result of the Time Warner filings. Following is a sample of locations with which Liberty has contracts to serve, the relevant contract date and the contractual commitment to install, demonstrating the urgency of Liberty's situation.

Address	Contract Date	Contractual Commitment to Install
524 East 72nd Street (Belaire Condo)	9/8/94	120 Days
433 East 56th Street	11/20/94	120 Days
550 First Avenue NYU Medical Resident Hall Greenburg Hall	8/8/94 8/8/94	45 Days
114 East 72nd Street	9/24/94	120 Days
25 West 54th Street	10/3/94	120 Days
639 West End Avenue	10/14/94	120 Days
200 East 32nd Street	1/18/95	120 Days
16 West 16th Street	12/7/94	113 Days
767 Fifth Avenue (General Motors Building)	9/19/95	70 Days
2727 Palisades Ave.	2/13/95	120 Days

Thus, Liberty does have short timeframes within which to meet its contractual commitments as represented in the STA requests. Liberty's inability, or even a perceived inability, to meet its contractual obligations will significantly impede its ability to grow and compete in the marketplace; again, the antithesis of the Commission's action in Video Distribution Systems -- 18 GHz).

As Liberty demonstrated in the petition to deny proceedings, Time Warner continually denigrates Liberty, almost to the point of committing slander, in its marketing effort to prevent buildings from signing on with Liberty. Time Warner will most assuredly seize on any perceived inability by Liberty to meet its contractual obligations and incorporate that into those marketing efforts.

The provision of multichannel video services is by its very nature a services industry and as such is driven largely by perception. Many New Yorkers perceive Time Warner to be unresponsive to their needs and interests, a perception that has enabled Liberty to grow and compete in the market. An inability by Liberty to provide its services, real or imagined, will significantly and negatively impede its ability to do just that.

Contrary to its allegations, the delay resulting from Time Warner's pattern and practice of opposing all Liberty applications falls well outside the category of "routine, administrative delay." The 60-90 time frame normally experienced in the processing of 18 GHz applications constitutes routine administrative delay. Processing of Liberty's applications is now subject to an open ended delay as a direct result of Time Warner's allegations. Again, such delay is anything but routine.

Time Warner rather disingenuously offers that "Liberty itself could alleviate that delay by making a full disclosure to the Commission, including whether each of its OFS applications specifies transmit or receive sites on buildings to which it provides unfranchised cable service, whether its OFS authorizations are intended to extend or cure such violations, and how it will otherwise cure such violations ..."

First, as Time Warner itself notes, Liberty has pending several applications to provide its service via microwave in lieu of service presently provided by hardwire interconnects, yet it objects to those filings. Liberty fails to see, and Time Warner has yet to explain, what possible good faith objection Time Warner has to applications filed to establish microwave paths of communication that will cure Liberty's provision of "unfranchised cable service."

Second, as Time Warner knows, Liberty is the subject of a standstill order issued by the New York State Cable Commission preventing Liberty from connecting additional non commonly owned, managed or controlled buildings via hardwire, even where no public right of way is crossed. Liberty has complied with the order during all periods in which it has been effective and will continue to act in compliance therewith. Accordingly, Liberty will not extend such "unfranchised cable service" unless and until authorized to do so.

Third, the constitutionality of the franchise requirement as it applies to Liberty's interconnection of non-commonly owned buildings where no public right of way is crossed is under review by the Second Circuit Court of Appeals. Time Warner is a party to that proceeding. Not only is Time Warner a participant to the Second Circuit litiga-

tion, but so too is the Commission, whose general counsel's name is on the government's brief to the court. Should that litigation be resolved in Liberty's favor, then no curative action will be necessary. Should that litigation be resolved unfavorably, then Liberty will either disconnect those facilities or obtain a franchise from the city, assuming that a process for the obtainment of such a franchise is then in place.

Fourth, Liberty, as the operator of a commercial enterprise, is unquestionably eligible for the authorizations at issue. See §§ 94.5 and 90.75(a)(1) of the Commission's Rules. Accordingly, Liberty is unquestionably eligible for the applied for STAs.

Time Warner is, in effect, having its cake and eating it too. First, it raised the franchise issue with the New York State Cable Commission asserting that Liberty may not make hard wire connections between non-commonly owned, managed or controlled buildings without a franchise; thus preventing Liberty from making such connections. Second, Time Warner has driven Liberty's ability to obtain microwave authorizations to a standstill. Now Time Warner seeks to impose conditions upon Liberty which it has already indicated are meaningless to it.

Nevertheless, Liberty is in the process of amending each of its pending applications so as to represent to the Commission whether such application specifies transmit or receive sites on buildings which are interconnected via hardwire from a non-commonly owned, managed or controlled location and whether the application is filed so as to allow Liberty to terminate service via hardwire from a non-commonly owned, managed or controlled location. The amendments will further represent that Liberty will not make non-common hardwire connections unless and until it is authorized to do so.